IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 176/2006
(Hema Ram Vs. State of Rajasthan & Ors.)

Date of Order : 17/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sunil Mehta for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Sandeep Mehta for the non-petitioners No.2 to 6.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 4.8.2005 passed by Additional Sessions Judge, Deedwana (for short 'the trial court' hereinafter) whereby the trial court discharged the non-petitioners No. 2 to 6 from the offence under Section 459 IPC and sent the matter to the Additional Chief Judicial Magistrate, Deedwana for trial in view of provisions of Section 228 Cr.P.C. holding therein that offence under Section 447 IPC is made out instead of offence under Section 459 IPC.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

It is contended by learned counsel for the petitioner that the occurrence took place in the house of the complainant which is evident from the statements of witnesses recorded by the police under Section 161 Cr.P.C. as also the Site Map and Site Inspection Note prepared by the police. In the Site Map and Site Inspection Note the place 'X' is shown as the residential house of petitioner complainant in which the accused non-petitioners No. 2 to 6 committed house breaking and caused injuries to the complainant party and therefore, offence under Section 459 IPC is made out from the material available on record.

Learned public prosecutor supported the contentions raised by learned counsel for the petitioner.

Learned counsel appearing for the non-petitioners No. 2 to 6 submits that the place marked 'X' shown in the Site Map is a courtyard and occurrence alleged to have taken place in the courtyard and therefore, the offence under Section 459 IPC is not made out and the court below was justified in discharging the non-petitioners from the said offence.

From the perusal of the material available on record, more particularly the Site Map and the Site Inspection Note, it appears that the occurrence took place just outside the room of the complainant in the courtyard at place marked 'X' and therefore, in my view, the trial court was justified in discharging

the non-petitioners No. 2 to 6 from the offence under Section 459 IPC, however, the trial court fell in error in directing to frame charge for the offence under Section 447 IPC as from the material available on record, in my view, offence under Section 452 IPC is made out.

Section 452 IPC provides that whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In Kartar Singh and others Vs. State, AIR 1956 Punjab 122, a Division Bench of Punjab High Court held that courtyard of the house where the complainant lived and tethered his cattle was a building within the meaning of the Section 452 IPC.

In International Airport Authority Employees' Union and Another Vs. International Airports Authority of India and Others (2001) 1 SCC 205, Hon'ble Supreme Court held that building includes appurtenances, hence, car park of an airport is part of the airport building.

In CIT, Bombay Vs. M/s Gwalior Rayon Silk Manufacturing Co. Ltd. (1992) 3 SCC 326 Hon'ble Supreme

Court held that Roads and drains laid inside the factory compound are necessary adjuncts and so constitute building and not plant and machinery.

In the instant case, the occurrence is said to have taken place just outside the room of the complainant petitioner in the courtyard at place 'X' wherein the non-petitioners No. 2 to 6 after making preparation for causing hurt to the complainant and his family members, committed house trespass and caused injuries and therefore, keeping in view of the decision of Punjab High Court in kartar Singh and Others Vs. State (supra) in my view, prima-facie the essential ingredients for the offence under Section 452 IPC are made out and there is ground to presume that the non-petitioners No. 2 to 6 have committed the offence under Section 452 IPC instead of offence under Section 459 IPC.

In view of the aforesaid discussion, the order impugned is modified to the extent that instead of charge for the offence under Section 447 IPC, the trial court is directed to frame charge for the offence under Section 452 IPC and proceed with the trial of the case in accordance with the provisions of Section 228 Cr.P.C.

The petition is accordingly disposed of.

(H.R.PANWAR),J.

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